

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CHRISTOPHER MERCED,

Plaintiff,

9:05-CV-1426  
(FJS/RFT)

v.

E. MOYLAN, Correctional Officer,  
C.O. LIPINSKI; SGT. BABBIE;  
CAPT. RELF, SUPERINTENDENT PERLMAN,

Defendants.

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APPEARANCES:

OF COUNSEL:

CHRISTOPHER MERCED  
Plaintiff, Pro Se  
03-R-5410  
Attica Correctional Facility  
Attica, N.Y. 14011

HON. ANDREW M. CUOMO  
Attorney General of the  
State of New York  
120 Broadway  
New York, New York 10271

ROGER W. KINSEY, ESQ.  
Assistant Attorney General

**FREDERICK J. SCULLIN, JR., S.J.:**

**DECISION & ORDER**

Presently before the Court is Magistrate Judge Randolph F. Treece's September 28, 2007 Report-Recommendation in which he recommends that Defendants' Motion For Summary Judgment be **denied** as to the claim of excessive force against Defendant Moylan, and

**granted** as to all other claims against all Defendants, and the Court having reviewed the Report-Recommendation and the entire file in this matter and no objections to said Report-Recommendation having been filed,<sup>1</sup> The Court hereby

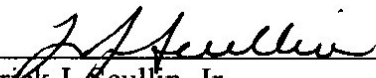
**ORDERS**, that the Report-Recommendation filed by Magistrate Judge Randolph F. Treece's September 28, 2007 is, for the reasons stated therein, **ACCEPTED** in its entirety; and the Court further

**ORDERS**, that Defendant's Motion for Summary Judgment is **DENIED** as to the claim of excessive force against Defendant Moylan, and **GRANTED** as to all other claims against all Defendants, and the Court further

**ORDERS**, that if Plaintiff does not notify the Court of his current address within thirty days of the filing of this Order, the Clerk of the Court shall enter judgment dismissing this action without prejudice, without further Order of this Court.

**IT IS SO ORDERED.**

Dated: October 29, 2007  
Syracuse, New York

  
Frederick J. Scullin, Jr.  
Senior United States District Court Judge

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<sup>1</sup> The Court notes that, although the Clerk of the Court mailed Magistrate Judge Treece's Report-Recommendation to plaintiff's last known address, it was returned to the Clerk's Office marked: Return to Sender; Not Deliverable as Addressed; Unable to Forward. "Released." The Court advises plaintiff that, under Local Rule 41.2(b), failure to notify the Court of a change of address as required by Local Rule 10.1(b) may result in dismissal of the action.

